

United States District Court
NORTHERN DISTRICT OF ILLINOIS
Eastern Division

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FILED

JUL 31 2008
MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

United States } Plaintiff
Daniel Hill } Defendant

Case No. 07 CR843

Hon Judge, Lef Kow, Joan

Daniel Hill the defendant (prose) moves the court to exclude statements the government contends are admissible against each of the named defendants under Fed. R. Evid. 801(d)(2)(E). This motion is based upon the Memorandum in Support of Motion to Exclude Co-conspirators.

MEMORANDUM IN SUPPORT OF MOTION TO EXCLUDE ALLEGED
CO-CONSPIRATORS' STATEMENTS

A co-conspirator's statement is admissible under Fed. R. Evid. 801(d)(2)(E) to show a defendant's participation in a conspiracy. United States v. Peralta, 941 F.2d 1003, 1007 (9th Cir. 1991). However

(b)efore admitting a statement of a co-conspirator into evidence against a defendant, the court must have independent evidence of existence of a conspiracy and the defendant's connection to it, and must conclude that the statements made was both during and in furtherance of the conspiracy. United States v. Layton, 720 F.2d 548, 553 (9th Cir. 1983); and Peralta, 941 F.2d at 1007. This requires the government prove three essential elements by a preponderance of the evidence before a co-conspirator's statement is admitted: (1) The existence of a conspiracy; (2) the declarant and the non-offering party Daniel Hill are involved in a conspiracy; and, (3) the statements are made during the course and in furtherance of the conspiracy. Bourjaily v. United States, 107 S.Ct. 2775, 2778 (1987). Although a pretrial evidentiary hearing is not mandated, such hearing is requested here because of the number of statements involved. See

Bourjaily, 1075 Ct at 279 n 1; United States v. Tamez, 941 F 2d 770, 775 (9th Cir. 1991); but see United States v. James, 590 F 2d 575 (5th Cir. 1979) (suggesting that a pretrial determination is appropriate). Without a pretrial hearing on the admission of the statements a tremendous amount of court time will be used which will disrupt an orderly presentation of this trial.

PROOF OF CONSPIRACY

To prove conspiracy the government must show (1) an agreement to accomplish an illegal objective, (2) one or more overt acts in furtherance of the illegal objective, and (3) the required intent to carry out the substantive offense. United States v. Schmidt, 947 F.2d 362, 367 (9th Cir. 1991); United States v. Penagos, 823 F 2d 346 348 (9th Cir. 1987), and United States v. Melchor-Lopez 627 F 2d 886, 890 (9th Cir. 1980).

There need not be direct evidence of an agreement, circumstantial evidence may suffice to show the existence of an agreement. Inferences of an agreement may be made "if there be concert of action, all the parties working together understandingly, with a single design for the accomplishment of a common purpose". Melchor-Lopez 627 F.2d at 890-891. It is not necessary that all of the specifics be worked out to prove an agreement. United States v. Pemberton, 730 F 2d 730, 733 (9th Cir. 1988).

The alleged statements themselves are not sufficient to establish a conspiracy.

There must be some independent evidence of a conspiracy in addition to the statements, before co-conspirator's statements can be admitted. Tamez, 941 F 2d at 775; and United States v. Gordon, 844 F 2d 1397, 1402 (9th Cir. 1988).

Proof of the declarant and the defendant's connection to the conspiracy once a agreement is shown, evidence of a defendant's slight connection to the conspiracy is sufficient to prove knowing participation.

United States v. Dunn, 564 F.2d 348, 357 (9th Cir. 1977) "Knowledge of the objective of the conspiracy" is material to a conspiracy conviction. Schmidt, 947 F.2d at 367.

[M]ere association with members of a conspiracy, the existence of and opportunity to join the conspiracy, or simple knowledge approval of, or acquiescence in the objective or purpose of the conspiracy, without an intention and agreement to accomplish a specific illegal objective, is not sufficient to make one a conspirator.

Melchor-Lopez, 627 F.2d at 890. Furthermore, family ties or other close associations are not enough to establish a conspiracy. United States v. Castanda, 9 F.3d 761 (9th Cir. 1993).

Proof of statements

The statements must demonstrate a concert of action between the defendant and the declarant. United States v. Layton, 985 F.2d 1388, 1398 (9th Cir. 1993). The statements must be made (1) during the course of the conspiracy, and (2) in furtherance of the conspiracy. United States v. Arias-Villanueva, 998 F.2d 1491, 1502 (9th Cir. 1993)

During the course of the conspiracy

Statements made after the conspiracy ceases or made after arrest are not statements made during a course of conspiracy. see United States v. Smith, 623 F.2d 627 (9th Cir. 1980). However, statements of co-conspirator's prior to the defendant's entry in the conspiracy are admissible as long as it is shown that the defendant is aware of the conspiracy's features and general aims. United States v. Mikhsia, 5 F.3d 1306, 1312 (9th Cir. 1993)

Mere Conversations or narrative declaration of past events are not admissible" under Fed. R. Evid. 801(d)(2)(E). Arias-Villanueva, 998 F2d at 1501 and United States v Yarbrough, 852 F2d 1522 (9th Cir 1988). The statements must further the common goals of the conspiracy. Yarbrough, 852 F2d at 1535. Hence, the statements must be made to induce enlistment, further participation, prompt further action, allay fears or keep co-conspirators abreast of an ongoing conspiracy's activities. Arias-Villanueva, 998 F2d at 1502 (citation omitted).

Here the Court must be ~~satisfied~~ satisfied that each defendant was connected to agreement, before determining whether any of the statements are admissible. It is therefore requested that the court require the government to proffer its proof as to the existence of the conspiracy and proffer how each of the Fifteen defendant are members of that conspiracy. Should the Court determine that the government can show by a preponderance of evidence that a pertains to each statement.

(Prose Under Necessity)

Respectfully Submitted

D. Q. Hill
Daniel Hill